

PROCEEDINGS OF THE BOARD OF HEALTH MEETING
Tuesday, March 10, 2009
5:30 PM

Present: Audrey Murphy, Don Murray, Mary Scray, J. Tibbetts, M.D.

Excused: Harold Pfothenhauer, Vue Lor-Yang

Staff Present: Judy Friederichs, John Paul, Juli Gray, Rob Gollman, John Luetscher (Corporation Counsel)

Guests Present: Larry Collins (JBS, Packerland, Inc.), Brett Losey (Sanimax), Lucas Becks (Becks Quality Cabinets), Rick Gallenberger (Sherwin Williams), Gerald Becks (Becks Quality Cabinets), Joe Van Deurzen, Laura Mushinski (Allens, Inc.), Andy Nicholson (Brown County Board of Supervisors)

1. CALL TO ORDER, INTRODUCTIONS & BOARD STATUS UPDATE

Board members, John Luetscher (Corporation Counsel) and staff introduced themselves.

Judy reported that she has contacted the County Executive's office regarding the status of Joe Van Deurzen's reappointment to the board. The Executive's office told her that his name would be on the next County Board meeting agenda for a vote. Judy received a call from Vue Lor-Yang who told her that she will be resigning from the board because of family obligations.

Audrey stated that Mr. Van Deurzen's term ran out at the end of 2008 – there is often a delay in re-appointing members to subsequent terms because of the timing of County Board of Supervisors' meetings.

2. APPROVAL / MODIFICATION OF THE AGENDA

Audrey suggested that items 4 and 5 be switched so that informational items on the agenda can be completed before the floor is opened to guests who wish to speak in front of the board regarding item 5.

MOTION: To approve the modified agenda. Tibbetts / Scray

MOTION CARRIED

3. APPROVAL OF MINUTES OF JANUARY 13, 2009

MOTION: to approve the minutes.

Scray / Murray

MOTION CARRIED

4. INFORMATION: TOURIST ROOMING HOUSES

John Paul stated that the City Council is addressing the issue of tourist rooming houses on Shadow Lane, across from the stadium. Alderperson Wery contacted the health department to inform staff of potential problems with these houses. One of the houses was approved and licensed as a Tourist Rooming House. The other 5-6 home owners were notified via email of the requirements for licensing these homes. Two of the owners responded that they will no longer be operating as demand for the homes has declined due to the increase in the number of hotel / motel rooms available in the city. John stated that his staff just wanted to make sure the owners are aware of the requirements should they choose to be licensed as a tourist rooming house.

Audrey asked if John will be doing any follow-up on the 3 or 4 houses that John has not gotten a response from yet. John said that his staff will follow up when football season starts. If these homes are found to be operating as rooming houses without licenses, citations will be written and fines levied. John stated that the fee for licensing the homes is \$175 for pre-inspection and roughly \$140 for a license.

5. REVIEW OF CHAPTER 38, BROWN COUNTY CODE OF ORDINANCES, ODOR VIOLATIONS, FOR POTENTIAL REVISIONS

Audrey stated that this is a discussion that began last fall with concerns expressed by Supervisor Nicholson. At the last Board of Health meeting, a discussion took place regarding Supervisor Nicholson's concerns. Supervisor Nicholson was present along with Attorney Fred Mohr. Attorney Mohr stated that the ordinance that is currently in place is an enforcement ordinance rather than an inspection ordinance. At the January meeting, three issues were identified that were to be discussed at the next meeting. The first issue was the number of verified complaints necessary to issue a citation – the current ordinance requires 3 within an 8-hour period; the second was the possibility of increasing the fines for violations; and the third was the question of whether some of the sanitarians' expenses could be recouped if they have to go out to the same facility a number of times.

Audrey stated that the ordinance was revised in 2005. At the time, the board felt that they had put a lot of time and effort in to strengthening it and believed that it was a good ordinance, however the board is open to suggestions that might

improve it even further. Audrey asked the new Corporation Counsel, John Luetscher to address the three issues one at a time.

1) Attorney Luetscher said that he understood that Supervisor Nicholson had suggested that the number of complainants be reduced from three to two or even one. He said that this would obviously increase the number of violations since it is easier to verify an odor with only one or two complaints. He stated that the ordinance is a public nuisance ordinance – by definition, a public nuisance is something that affects more than one, or a significant number of people. The appellate courts in Wisconsin have not given a definition of what a significant number would be – but it does need to be a substantial number. He also said that the extent of the nuisance should also be taken in to account. Taking into account the definition of a public nuisance, Attorney Luetscher stated that the number of verified complaints required before a violation is issued should not be reduced to one, because that would be a private nuisance. He did not feel that there was really a difference between two and three. Audrey asked if it was reasonable to leave the time frame at 8 hours. He stated that according to the statistics provided by John Paul, increasing the time frame would not make a significant difference in the number of violations issued.

John Paul distributed a list of the complaint / violation statistics for 2008. He stated that three citations were issued based on a little more than 100 verified complaints. If two verified complaints had been required, 22 citations would have been issued. John suggested changing the complaint time frame to 12 hours to match the time frame for noise complaints since noise is contained in the same ordinance with odor.

Don asked how many times the same person has called in multiple complaints. John said that he does not have that information but that about 35% of complaints are not verifiable. John further said that the department frequently gets calls from a particular area or neighborhood – but he does not know how many calls come from the same person.

When asked for his input, Rob Gollman stated that the sanitarians are willing to do whatever the board decides is appropriate.

Attorney Luetscher asked Rob if, when a complaint comes in, the inspector waits for another complaint to come in before deciding whether a violation has occurred. Rob said that, typically what happens is that the inspector goes out to investigate the first complaint and gets another one or more calls while they are doing their investigation or when they are on their way home.

Audrey asked board members whether they would like to reduce the number of complaints necessary for a violation and/or whether the amount of time between complaints should be increased.

Mary said that she does not have a problem reducing the number of complaints to two but leaving the 8-hour time frame. Don said that he does not understand where the ordinance is falling short. He asked whether companies who had been cited are not making an effort to reduce the number of complaints. Supervisor Nicholson said that he expressed his opinion at the last Board of Health meeting. He feels that since the ordinance was revised in 2005 there have been ongoing problems and that the ordinance may need some tweaking. Dr. Tibbetts asked Supervisor Nicholson if a reduction in the number of complaints needed to issue a citation would meet his needs with the expectation that more citations will be issued. Supervisor Nicholson said that he does not necessarily expect more citations but feels that reducing the number of complaints required for a violation would hold companies more accountable to fix the problem. Audrey commented that the mission of the health department is not to be punitive but to work in a cooperative, educational fashion with businesses.

Audrey asked that the board keep in mind the possibility of reducing the number of complaints from three to two and keeping the 8 hour time frame intact while the other two issues are being discussed.

Supervisor Nicholson asked where the idea of increasing the time frame came from – it was not part of his recommendations. Audrey said that this was a suggestion by staff which would make the ordinance more uniform between the provisions for noise and odor.

2) Audrey stated that the second issue is the idea of increasing the fines for violations. The ordinance states that the fine for the first violation is not less than \$50 and not more than \$500; the second within a 365 day period is not less than \$250 and not more than \$1,000; the third fine is to be determined by the board. However, a motion was made in November, 2006 to set the penalty for a third violation to \$1,250 to \$2,000. The motion further stated that fourth and subsequent violations would require the business to appear before the board.

Attorney Luetscher said that the third violation cannot remain as it is – a maximum must be set. The change recommended by the motion must be made part of the ordinance. He further stated that the forfeitures included in an ordinance by law cannot be punitive – they are intended to correct and educate. The fines must be reasonably related to the cost to a municipality to address the concern.

3) The third issue was to recoup some of the expenses related to the sanitarians' time responding to complaints. Attorney Luetscher confirmed that you cannot charge a company just because someone complains. He looked in to adding "costs" to a fine that would go to the department and determined that this is also not allowed. The forfeiture itself is supposed to be the vehicle to recoup those costs.

Judy said that John Paul has talked to Land Conservation which has a procedure that includes fines being paid directly to their department. Attorney Luetscher said that he has also talked with Land Conservation and said that the practice of collecting those fines and keeping them in the department would not work in this case.

Audrey asked board members if they agreed that the number of violations be reduced to two, the time frame should stay at 8 hours and that the motion from November, 2006 be put in place to set a minimum and maximum fine for a third violation. Don said that he did not agree that the number of complaints should be reduced to two unless there is real evidence showing that there is abuse by a company that shows things are not getting fixed by being fined.

MOTION: To depart from the regular order of business to hear public comment.
Scray / Murray

MOTION CARRIED

Joe Van Deurzen, 713 Eau Pleine, De Pere: Mr. Van Deurzen stated that the board had spent a ton of time working to revise the ordinance in 2005. Everyone here tonight has talked only about companies – but this ordinance is for the county of Brown. This ordinance takes into consideration any citizens such as someone with a wood-burning stove, or someone who decides to smoke fish. If we have a company with a terrible odor, getting 3 complaints is not going to be a problem. But, if an individual has 2 neighbors that are mad at them, they are going to be punished. The board put the 3 complaints in there in an effort to be cautious and protect individuals who might be creating an odor. Mr. Van Deurzen pointed out that odors created by farmers aren't a violation because it is an agricultural use – but someone who spreads manure on their back yard garden and creates an odor can be issued a fine. The purpose of the health department is to help and educate the public – not to make money. Another thing, when it comes to odor, there is no meter like there is for noise. Mr. Van Deurzen stated that if he were on the board, he would not vote to change the ordinance.

Larry Collins, Environmental Manager for JBS Packerland: Mr. Collins stated that he has respect for everyone speaking tonight. He said that he feels that the ordinance as it exists does have teeth. Everyone knows that the county has been citing Packerland for some time, often with a lot of frustration. He stated that Packerland has invested a lot of money on improvements relating to odor: \$330,000 on stack project; \$30,000 on improvements to the ozone generator; \$32,000 for a chemical storage building; \$75,000 to improve odor control at the wastewater treatment plant; \$20,000 - \$30,000 working on some small, isolated opportunities at the plant. He said that he questions why this is occurring now because he sat at a meeting just a couple of months ago where more than one

board member stated that they were satisfied with the ordinance as it is. He further pointed out that multi-million dollar corporations are having problems making ends meet now too. Mr. Collins stated that he has personally stood in front of a house where someone called to complain with members of the Board of Health and there was no odor. He said that it brings into question the subjectivity and the fairness of the process. One neighbor could be upset and call their friend two houses away and say that Packerland stinks again and all of a sudden you have a violation. Packerland is satisfied with the ordinance as it is, and feels that it is effective.

Mary asked when the changes at Packerland would take place. Larry stated that they are hoping that the stack will be finished by April 1st.

Lucas Becks, Becks Quality Cabinets: Mr. Becks said that they spray different finishes in their business and have been in touch with the DNR regarding emissions, etc. and have been told that they are in compliance with the DNR's emissions rules. He said that he would not know what to change in order to comply with this ordinance if it is changed. His business is in an industrial park with other companies yet they have been visited twice due to complaints. As was mentioned before, if the ordinance is changed to only 2 complaints, one neighbor could call another neighbor and you've got a violation.

Brett Losey, Environmental Supervisor with Sanimax: Mr. Losey stated that he is in complete agreement with Joe and Larry regarding how the ordinance is currently written. The "three strikes" rule is what America is built on. In terms of identifying a public nuisance, where a substantial number of citizens are affected, two complaints is still questionable as far as showing that a substantial number are affected. Three complaints still seems reasonable to warrant a citation.

Laura Mushinski, Director of Environmental Quality for Allens: Ms. Mushinski stated that the ordinance as it is now is working. Allen's received a citation two years ago and had a major drop in complaints last summer by walking away from millions in investments in their wastewater facility with the ordinance as it is now.

MOTION: To return to the regular order of business. Tibbetts / Scray

MOTION CARRIED

Audrey asked board members to give their feedback after hearing from the attorney and the public. She stated that the housekeeping related to the third citation needs to be taken care of.

MOTION: To leave the ordinance as-is. Murray / Tibbetts

DISCUSSION: Mary asked if there is an ordinance from another county that would help with this discussion. Attorney Luetscher said that he has looked and discovered that there are not a lot of these ordinances out there. A few that he found were very basic – similar to what Brown County had prior to 2005. Other jurisdictions outside of Wisconsin have created more elaborate ordinances. These jurisdictions do have instruments that can measure odors. However, he did not find any other jurisdictions with a better ordinance. This ordinance is unique in identifying the number of complaints constituting a violation.

MOTION CARRIED: Yeas 3 (Dr. Tibbetts, Mrs. Murphy, Mr. Murray)
Nays 1 (Mrs. Scray)

MOTION: To include in the ordinance a penalty of \$1,250 to \$2,000 for all third violations to the odor ordinance within a 365 day period.
Scray / Murray

MOTION CARRIED

Judy asked Attorney Luetscher whether violations beyond the third in a 365 day period would be treated the same as the third. He stated that, yes, the third and subsequent violations would be treated the same.

6. DIRECTOR'S REPORT

Judy stated that APAC, who had received a single complaint regarding noise last year, had agreed to test their backup generator once a month. Health department staff did follow up with the company and with the complainant. John was unable to contact the complainant and no other complaints have been made. Rob Gollman plans to run a check on the noise again to make sure there is no longer a concern.

The Hearing & Vision working group has met. The biggest part of the meeting was informational – giving people the opportunity to ask questions. Julie Knier, County Board Supervisor will be doing some research on statutes in other states related to hearing and vision screening. If she feels the need to re-convene the group, she will let Judy know. One thing that was helpful to the school districts was the knowledge that there were problems with their volunteers. The districts were going to try to be helpful to the program in making sure there are volunteers present to help with screenings.

Mary asked what years the health department screens. She stated that the Lions Club screens kindergarten and 4-year-old kindergarten and feels that there is a duplication of service in that age group. Judy said that Mary would need to check with Ricki Krautkramer regarding this since they have worked hard over the years to avoid duplication. Mary said that she would like to look at combining the Lions group and the Health Department to make sure duplication is not

happening. Dr. Tibbetts and Judy stated that there is not duplication; the screenings are coordinated to prevent that. Don stated that the schools would tell organizations if their students were being screened twice as they want to avoid disruption of the school day.

CD Update: Cases reported include a case each of Pertussis, Shigella, and Blastomycosis—all in adults. In the case of Shigella, it is important to determine if the person works in a sensitive occupation like food-handling. If the person is so employed, he/she must have a negative test result before return to work. There have also been some cases of Hepatitis A and C. The first case of Sapovirus in the state was reported in Brown County; this is similar to Norovirus. This virus usually occurs in infants and children; however this outbreak was in adults in a group home. Influenza activity is low as of the end of February. The state is not sure whether there will be a peak in activity or if it will remain in the low category.

We have just received information on our 140 review which is the audit that occurs every 5 years. It's extensive in that it looks at our compliance to the statutes at Level III. This time we will be filling out an electronic survey to complete the audit. We are to inform the state which month the survey will be completed.

The preparedness exercise originally scheduled on October 1st has been changed to August 5th. This eliminates the option to provide flu vaccine at the exercise which had been the original plan. This will be an exercise to practice receiving a package from the Strategic National Stockpile.

Judy said that she had prepared a brochure for Vue Lor-Yang during her training that summarized preparedness activities in the county. She distributed a copy of the brochure to board members. She suggested that Steve Johnson come to the next meeting to do a presentation on preparedness activities.

7. ANY OTHER BUSINESS AUTHORIZED BY LAW

No other items were discussed.

8. ADJOURNMENT/NEXT MEETING

The next meeting is scheduled for May 12th. Judy and Mary indicated that the change to the ordinance will be brought through the County Board process by the next meeting.

MOTION: To Adjourn at 7:02 PM. Scray / Tibbetts

MOTION CARRIED